

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 72 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LAXMAN RAM (CONSTABLE)

Versus

ADDITIONAL DEPUTY INSPECTOR

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Appearance:

MR EE SAIYED for Petitioner

MR BB NAIK for Respondent No. 1, 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/02/98

ORAL JUDGEMENT

Heard Learned Advocate Mr.Gupta for the petitioner. Mr.Ajmera, Learned Additional Cent.Government Standing Counsel is not present on call.

2. The petitioner herein is a constable serving in the Central Reserve Police Force and claims promotion as Lance Naik, with effect from the date some of his juniors were so promoted sometime in the year 1986. The facts

leading to the present petition are as under:-

3. The petitioner was enrolled as a constable on 14.11.62 in 10 BN R.A.C. (10th Battalion Rajasthan Armed Constabulary) It is the claim of the petitioner that after his enrolment in November, 1962 he underwent Band Course in 1963 and served as Band Constable from 1963 to 1968. For nearly 10 years thereafter i.e. from 1.4.68 to 31.12.1978, the petitioner served as Constable (General Duty). On 1.1.1979, the 10 BN R.A.C. was merged with 31 BN C.R.P.F (31st Battalion, Central Reserved Police Force). On merger of 10 BN R.A.C. with 31 BN, C.R.P.F., the petitioner was absorbed as Constable (Band). Thus the petitioner has been serving as Constable (Band) since 1.1.1979. It is the grievance of the petitioner that some of his juniors were promoted as Lance Naik (Band) in 1986. However, the petitioner's case for promotion was not considered alongwith his juniors. The petitioner made a representation in this respect on 16.4.90 (Annexure A) to the petition. The said representation was not replied to. Therefore the petition.

4. The petition has been contested by the respondents and one Shri C.M.Pandey, Dy.Inspector general of Police, C.R.P.F., Gandhinagar, has made affidavit in reply on 21.4.94. It is denied that the petitioner completed the band course in 1963 as averred by him. It is also denied that petitioner served as a Band Constable during the period from 1963 to 1968. It is submitted that transfers of constables from one trade/cadre to another trade/cadre within the C.R.P.F. is not permissible unless the person concerned is better suited for another trade/cadre and that he is willing for such transfer. However, in such case, the person concerned would lose his seniority and his seniority in the cadre to which he is transferred will be counted from the date of transfer. It is further submitted that the petitioner expressed his willingness for being transferred to the Band Platoon and the option certificate given by him is reproduced in the affidavit. It is therefore submitted that petitioner's seniority as Constable (Band) is determined on the basis of the date of his transfer i.e. 1.1.79. It is further stated that no Constable (Band) junior to the petitioner is further promoted as Lance Naik. It is stated that the constables who were so promoted in 1986 had joined the Band Platoon long before the petitioner did and thus were senior to the petitioner. It is stated that the petitioner has not reached his turn for being considered for further promotion and the question of his promotion does not

arise.

5. Mr.Gupta has submitted that there is one common cadre of constables and there are no different cadres maintained on the basis of the trade like Band constables. He has submitted that the seniority in the cadre of constable is determined on the basis of the rules of seniority encoded in Rule 8(f) of the Central Reserve Police Force Rules, 1955. Rule 8 provides for seniority.

Rule 8(f) reads as under:-

"Those recruited as constables shall take their seniority from the date of their first appointment:

Provided that on confirmation they will take their seniority in accordance with the date of their confirmation:

Provided further that if the date of confirmation is same a person of higher age will be senior in rank to a person of lower age."

6. Mr.Gupta has therefore submitted that in view of the provisions made in rule 8(f),the petitioner's seniority should be determined on the basis of the date of enrolment i.e. 14.11.62 and not on the basis of date of absorption as Constable (Band) on 1.1.79. By making an affidavit in rejoinder, the petitioner has denied that he gave an option certificate as contended by the respondents in the affidavit referred to herein above. Be it noted that though the affidavit in rejoinder was made in the month of September, 1997, the same has not been served upon the respondents till date. The said affidavit is therefore not taken on record. Be it noted that neither the petitioner has produced copy of the order of his absorption in 31 BN C.R.P.F. nor the respondents have produced the copies of the administrative instructions referred to in the affidavit in reply in support of their contentions. On perusal of the option certificate reproduced on Pg.11, it does appear that on the merger of 10 BN R.A.C with 31 BN C.R.P.F., the petitioner had offered option to be absorbed as Constable (Band). However, there is nothing on record to show that seniority is maintained trade/cadre wise. The court shall therefore rely upon the rules made in that behalf. Rule 8(f) reproduced herein above does refer to the seniority of constables from the date of their enrolment/confirmation and it does not make any provision regarding separate seniority for

seperate trades. I, therefore, hold that the petitioner's seniority in the cadre of constable shall be determined either from the date of his enrolment i.e.14.11.62 or the date of his confirmation as the case may be.

7. The petition is therefore allowed. The petitioner's seniority shall be determined on the basis of date of enrolment/confirmation as the case may be in consonance with the rules 8(f) of the CRPF Rules, 1955. After determining the seniority of the petitioner as aforesaid, the petitioner's case for further promotion shall be considered with effect from the date his juniors, if any, are so promoted, in accordance with law. In the event of the petitioner being found suitable for promotion he shall be given due deemed date of promotion and consequential reliefs which he may be entitled to in accordance with the prevalent rules. The petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. There shall be no order as to costs.

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